

4 February 2020

Three Dukes International Trading Ltd, t/a Double Bucks
1210 Pukuatua Street
Rotorua
3010

By email: [REDACTED]

Attention: Director – [REDACTED]

Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating Three Dukes International Trading Ltd, t/a Double Bucks (**Three Dukes**) under the Fair Trading Act 1986 (**Fair Trading Act**). We have now completed our investigation and are writing to advise you of the outcome.
2. In summary, the Commission considers that Three Dukes is likely to have committed an offence against section 40(1) of the Fair Trading Act in that, contrary to section 30(1) of the Fair Trading Act, it supplied the following toys (collectively **the toys**) that did not comply with a mandatory product safety standard for children's toys (**safety standard**):¹
 - 2.1 A push duck toy;
 - 2.2 large bathtub toy;
 - 2.3 small bathtub toy;
 - 2.4 green transparent rattle; and
 - 2.5 a yellow rattle set.
3. The Commission has decided in this instance to issue Three Dukes with a warning in respect of the conduct.

¹ The Australian/New Zealand Standards for children's toys (AS/NZS ISO 8124.1.2002), as adopted under the Product Safety Standard (Children's Toys) Regulations 2005 (**Regulations**).

4. A warning is not a finding of non-compliance; only the Courts can decide whether a breach of the law has occurred. In this case we have determined that at this time we will not be bringing legal action to establish fault.²

Legal framework

5. Section 30(1) of the Fair Trading Act states:

If a product safety standard in respect of goods relates to a matter specified in section 29(1), a person must not supply, or offer to supply, or advertise to supply those goods unless that person complies with that product safety standard.

6. The safety standard applies to toys manufactured, designed, labelled, or marketed for use by children up to and including 36 months of age whether or not the toys were manufactured, designed, labelled, or marketed for use by children over that age.³
7. Toys do not comply with the safety standard if they have small components or small components come off the toy during reasonably foreseeable abuse testing, because these components create a choking hazard for young children.⁴ Toys also do not comply with the safety standard if their size and shape mean that they risk becoming lodged in a child's airway.⁵
8. The intention of the reasonably foreseeable abuse tests is to simulate the exposure of a toy to structural damage as a result of dropping, pulling, twisting and other actions likely to be performed by a child interacting with the toy. The tests set out within the safety standard include a drop test, a torque test, and a tension test.

The investigation

9. Commission staff purchased units of the toys on from Three Dukes on 26 February 2019.
10. One or two units of each of the toys were sent for testing to Test Research on 4 March 2019. Test Research tested all the units and concluded they did not comply with the safety standard. Under reasonably foreseeable abuse testing, small parts were liberated from each of the toys which fit entirely into the small parts cylinder.
11. Three Dukes have been unable to provide any documentation to confirm where the toys had been sourced, and the exact quantities you purchased to supply in your

² Commission's published Enforcement Response Guidelines at [41]

³ Section 4(1) of the Regulations.

⁴ Sub-clause 4.4.1 of the AS/NZS ISO 8124.1.2002 states "removable components thereof and components liberated during testing in accordance with 5.24 (reasonably foreseeable abuse tests) shall not fit entirely, whatever their orientation, into the small parts cylinder when tested in accordance with 5.2 (small parts).

⁵ Clause 4.5.1 of the safety standard states certain toys shall not be capable of penetrating past the test templates.

store. You estimated six units of each toy were purchased and only 15 were supplied to the public. Of those the Commission purchased 13.

12. Three Dukes have removed all the non-compliant toys from sale as soon as it was made aware of our investigation on 1 March 2019. It instigated a recall by posting a notice in your store.

The Commission's view

13. The Commission is of the view that Three Duke is likely to have breached the Fair Trading Act by supplying the toys. However, we are satisfied that in this instance issuing a warning is the most appropriate enforcement outcome.
14. Our decision has been made bearing in mind the remedial action taken by Three Dukes to post a recall notice in store, its quick action to remove the toys from sale, the very low number of products supplied, and based on your advice that Three Dukes did not import the toys. .
15. However, we are concerned that you were not able to advise where the toys were sourced within New Zealand. Under section 47L (3)(d) of the Act, an authorised employee of the Commission when exercising powers under the Act, has the ability to require a retailer to supply information to identify where relevant goods have been acquired. Depending on the circumstances, a failure to provide such information may constitute an obstruction offence under s. 47F of the Act. While we did not exercise our formal powers in this case, we strongly recommend that in future, you should take steps to ensure that you maintain accurate inventory and supply records in your business of all stock, including toys, that you purchase for supply to consumers. This should include accurate details of the supplier.
16. We advise and encourage Three Dukes to regularly review its compliance procedures and policies. In particular we recommend you keep up to date with New Zealand's product safety standards (in conjunction with the relevant regulations), and carry out basic checks on newly stocked toys (and other regulated products) to ensure they still meet the requirements of the safety standard.
17. This warning letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role


18. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act. Regulations setting mandatory safety standards for certain products are enforced by the Commission under the Fair Trading Act.

19. We have enclosed copies of the Commissions guidance on the product safety standards for reference, which are available on our website at www.comcom.govt.nz/safety.

Penalties for breaching the Fair Trading Act

20. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
21. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.
22. Thank you for your assistance with this investigation. Please contact Simon Foster on 09 951 1473 or by email at simon.foster@comcom.govt.nz if you have any questions in relation to this letter.

Yours sincerely



John Lyall
Manager - Consumer
Competition Branch